

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

In re: PHARMACEUTICAL INDUSTRY
AVERAGE WHOLESALE PRICE
LITIGATION

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) MDL No. 1456
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) Civil Action No. 01-12257-PBS
)

THIS DOCUMENT RELATES TO:

)
) Hon. Patti B. Saris
)

*United States ex rel. Edward West v. Ortho-
McNeil Pharmaceutical, Inc.*

Subcategory Docket No. 06-12299-PBS

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DEFENDANT’S RULE 25(a)(1) MOTION TO DISMISS DUE TO DEATH OF RELATOR

Pursuant to Federal Rule of Civil Procedure 25(a)(1), Defendant Ortho-McNeil Pharmaceutical, Inc., n/k/a Ortho-McNeil Pharmaceutical, LLP (“OMP”), by and through its attorneys, Sidley Austin LLP, moves that the Court dismiss relator Edward West’s complaint pursuant to Federal Rule of Civil Procedure 25(a)(1). That rule requires the Court to dismiss an action by a deceased plaintiff if a motion to substitute the decedent is not made within ninety days of the filing of a statement noting his death. Relator Edward West died in early November 2008, and a statement noting his death was filed on December 8, 2008. As the ninety day time period has passed without such substitution, West’s claims must now be dismissed.

A memorandum of points and authorities in support of the motion is being submitted herewith.

Date: March 25, 2009

Respectfully submitted,

ORTHO-MCNEIL PHARMACEUTICAL, INC.

By: /s/ Scott D. Stein

One of Its Attorneys

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CERTIFICATE OF SERVICE

I, Brad Robertson, certify that on March 25, 2009, I electronically filed the foregoing document with the Clerk of the Court for the District of Massachusetts using the court's CM/ECF system. A copy of the foregoing also has been served on the following individuals by depositing a copy in the U.S. mail, first-class postage pre-paid:

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